

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

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PRESENT

MR. JUSTICE MIR HAZAR KHAN KHOSO, CHIEF JUSTICE.
MR. JUSTICE NAZIR AHMAD BHATTI.

JAIL CRIMINAL APPEAL NO. 33/L OF 1994
JAIL CRIMINAL APPEAL NO. 52/L OF 1994.

Muhammad Rafique son of Hakim
Ali, resident of Tibi Diyal
Singh, Tehsil Chunian, ... Appellants
District Kasur.

and

Haji Muhammad son of Siraj Din
resident of Salamat Pura
included in Mandi Usman Wala,
Tehsil and District Kasur.

Versus

The State ... Respondent

For the appellants ... Sh. Muhammad Naeem,
Advocate

For the State ... Ch. Muhammad Ibrahim,
Advocate

No. date of F.I.R
Police Station ... No. 23, dt. 6.1.1991,
P.S Kangan Pur

Date of order of
the trial court ... 30.7.1992.

Date of Institution
(J.Cr.A.No. 33/L/94) ... 9.2.1994

Date of Institution
(J.Cr.A.No. 52/L/94) ...

Date of hearing
and decision of
both the appeals. ... 5.4.1994.

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JUDGMENT

NAZIR AHMAD BHATTI, J. - Complainant Muhammad Tufail,

P.W.2 Bashir Ahmad and deceased Muhammad Asghar, residents of village Attari Karam Singh, were carrying on the business of 'khoya' at bus-stand of village Talvandi. On 6.1.1991 at 7.00 P.M all the three were going back to their village after the business and when they were about $1\frac{1}{2}$ furlongs from the village they were confronted by three persons. The latter were not known to the former and all the three were clad in shalwar qamees, were of medium height and wheat complexioned. Out of the three assailants two were armed with rifles and one was armed with a shot gun. One assailant armed with a rifle, carried out search of the pocket of the complainant and took out Rs.1000/- from him and his identity card. The other assailant with the rifle carried out search of the pocket of Bashir Ahmad and robbed him of Rs.60/- and his identity card. When the 3rd assailant armed with the shot gun tried to carry out the search of Muhammad Asghar, the latter resisted whereupon the former fired a shot at him with which he was hit on the neck, fell down and expired at the spot. Thereupon all the three assailants fled away from the spot. The complainant asked Muhammad Bashir to look after the dead body and he went to make report in Police Station Kangan Pur but the investigating officer met him in the way and he recorded his report at 9.00 P.M.

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2. Autopsy on the dead body of Muhammad Asghar deceased, (the doctor has given the name Muhammad Ashraf, perhaps erroneously) was carried out by P.W.4 Dr. Shahid Salim on 7.1.1991. The doctor found the following injuries on the dead body:-

- "1. One circular wound 2½ c.m diameter. Margins inverted and blackened. Tracia deep in front of neck just above the manuprium sterni. Wound was directed backward and to the right and was chest cavity deep. Right caretid and juglor vesscles were ruptured. Right lung was perfurated. Chest cavity of right side was full of blood.
2. Three lacerated wounds size 1 c,m x 1½ c.m each Margins everted, chest cavity deep on the back of the chest right side upper part 8 c.m right of midde line and Ist rib posterior side was fractured. One cardboard was recovered from injury No.2."

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3. According to the opinion of the doctor injuries No.1 and 2 communicated with each other, so injury No.1 was entry wound and injury No.2 was exit wound. The doctor gave the opinion that death occurred due to shock and haemorrhage on account of injury which was sufficient to cause death in ordinary course of business. The doctor further gave the opinion that the duration between injury and death was few minutes.

4. P.W.9 Ahmad Ali, Sub Inspector, Police Sttion Kangan Pur had recorded report of P.W.1 complainant Muhammad Tufail which was incorporated in F.I.R No.23/91 of the same date. The said Sub Inspector went to the spot and recovered one empty, Ex.P/2, of

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12-Bore from the place of occurrence and prepared memo of recovery, Ex.PC and sealed it into a parcel. Accused Muhammad Rafique, appellant of Cr.A.No.33/L of 1994, was arrested on 19.1.1991 by P.W.11 Muhammad Ali Inspector/SHO Police Station Kanganpur who recovered one 12-Bore double barrel shot gun from his possession in the presence of P.W.9 Ahmad Ali, Sub Inspector, who was at that time, accompanying the former. Identification parade of appellant Muhammad Rafique was held on 4.8.1991 by P.W.13 Muhammad Aslam Janjua, Magistrate Ist Class wherein he was allegedly identified by the two eye witnesses, P.W.1 Muhammad Tufail and P.W.2 Bashir Ahmad. The date of arrest of accused Haji Muhammad, appellant of Cr.A.No.52/L of 1994, and the circumstance of his identification parade are not available in the record. However, he was asked a question in his statement under section 342 Cr.P.C about his identification parade having been held on 17.9.1991. But there is no evidence on the record as which Magistrate had held the identification parade and who had identified him therein. Co-accused Ghulam Mohbuddin was arrested on 19.1.1991 and his identification parade was held by P.W.13 Muhammad Aslam Janjua Magistrate Ist Class on 30.1.1991.

5. After investigation all the aforesaid three accused were sent up for trial before the Additional Sessions Judge



Chunian who charged all of them under section 20 of the Offences Against Property(Enforcement of Hudood) Ordinance,1979, as also under section 302/34 PPC. All the three accused pleaded not guilty to the charges and claimed trial.

6. After the conclusion of the trial the learned Additional Sessions Judge convicted all the three accused under section 302/34 PPC and sentenced to each of them to undergo imprisonment for life and to pay a fine of Rs.20,000/- or in default to further undergo simple imprisonment for 6 months. The learned Additional Sessions Judge also convicted all the three accused under section 20 of the Hudood Ordinance and sentenced each of them to undergo rigorous imprisonment for 7 years. Convict Ghulam Mohiuddin had challenged his conviction and sentence by Cr.A.No.334/L of 1992, which was accepted by this Court on 18.4.1993 (announced on 31.5.1993). The other two convicts accused Muhammad Rafique and accused Haji Muhammad have filed J.Cr.A.No.33/L of 1994 and J.Cr.A.No.52/L/1994 respectively to challenge their conviction and sentence. Since both the appeals have arisen from the same judgment, they are being disposed of this single judgment in Cr.A.No.33/L/1994 in hand.

7. We have gone through the entire record of the case with the assistance of the learned counsel for the parties and have also heard their arguments.

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8. P.W.1 Muhammad Tufail and P.W.2 Bashir Ahmad are eye

witnesses of the occurrence. Both have corroborated the contents

of the report which was made in the Police Station by P.W.1

Muhammad Tufail. Although one empty of 12 bore was recovered from

the spot and a double barrel shot gun was also recovered from the

possession of appellant Muhammad Rafique but no effort was made to

connect the empty with the aforesaid shot gun and there is no

evidence on the record to show if the said empty was fired from

the recovered shot gun and whether the latter weapon was used

for committing the murder of Muhammad Asghar.

9. Neither the names nor any description of features of

the appellants were given in the report made by the complainant.

The latter and P.W.2 Bashir Ahmad also did not know them previously.

The identification parade of appellant Muhammad Rafique was

held on 4.8.1991 although he was arrested on 19.6.1991 and that

of appellant Haji Muhammad allegedly on 17.9.1991. It had also come

in evidence that during the investigation the names of the

appellants had been disclosed to the investigating officer by some

persons of the village in the presence of the complainant and the

other eye witnesses and both the eye witnesses had met the

investigating officer before they were called upon to identify

the appellants and there are strong reasons to believe that they

were informed of the features of the appellants. As such the

identification parade had become very doubtful.

10. The occurrence took place at 7.00 P.M in the month of

January and it was a dark night. The appellants were also not known to the P.Ws . It was, therefore, very doubtful whether they had correctly marked the features of the appellants. This point finds further support from the fact that the features of none of the assailants were disclosed in the F.I.R. Even on this score it was doubtful whether the eye witnesses had correctly identified the appellants and had noted any particular features about them. It was alleged in the F.I.R that the complainant had a torch at the time of the occurrence but it was not alleged by any of the eye witnesses that they had identified the assailants in the torch light. The failure to produce any torch to the investigating officer at the time of report also showed that actually there was no torch with any of the P.Ws.

11. From the aforesaid circumstances we have come to the conclusion that much doubt was created in the matter and the charge could not be proved against the appellants beyond any reasonable doubt. We, therefore, extend the benefit of doubt to the appellants and by accepting their appeals, set aside the conviction and sentences awarded to them by the learned Additional Sessions Judge Chunian by judgment dated 30.7.1992. They are acquitted of the offence for which they were convicted and sentenced.

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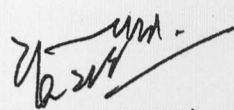
J.Cr.A.No.33/L of 1994
J.Cr.A.No.52/L of 1994

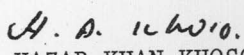
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Both the appellants shall be set at liberty forthwith if not
required in any other case.

Fit for reporting.


(NAZIR AHMAD BHATTI)
JUDGE


(MIR HAZAR KHAN KHOSO)
CHIEF JUSTICE

Islamabad, 5.4.1994.
M.Akram/